UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAUL HERRERA and HUGO ORDONEZ, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

LAFAYETTE STREET PARTNERS, LLC d/b/a LAFAYETTE GRAND CAFÉ & BAKERY, LAFAYETTE STREET PARTNERS II, LLC d/b/a LAFAYETTE GRAND CAFÉ & BAKERY, NOHO HOSPITALITY, LLC d/b/a NOHO HOSPITALITY GROUP, ERIC MELO, GUSTAVO DIAZ, LUCIANO DUCO, LUKE OSTROM, NICHOLAS LORENTZ, BRYAN NASWORTHY, and DOMINIC "DOE" (LAST NAME UNKNOWN),

Defendants.

Case No.

COLLECTIVE ACTION COMPLAINT AND JURY TRIAL DEMAND

Plaintiffs SAUL HERRERA ("Mr. Herrera") and HUGO ORDONEZ (Mr. Ordonez) (collectively, "Plaintiffs"), on their own behalf and on behalf of all others similarly situated, by and through their undersigned attorneys, Hang & Associates, PLLC, hereby file this complaint against Defendants LAFAYETTE STREET PARTNERS, LLC d/b/a LAFAYETTE GRAND CAFÉ & BAKERY ("Lafayette Street Partners I:"), LAFAYETTE STREET PARTNERS II, LLC d/b/a LAFAYETTE GRAND CAFÉ & BAKERY ("Lafayette Street Partners II"), NOHO HOSPITALITY, LLC d/b/a NOHO HOSPITALITY GROUP ("NoHo Hospitality Group") (collectively, the "Corporate Defendants"), ERIC MELO ("Melo"), GUSTAVO DIAZ ("Diaz"), LUCIANO DUCO ("Duco"), LUKE OSTROM ("Ostrom"), NICHOLAS LORENTZ ("Lorentz"), BRYAN NASWORTHY ("Nasworthy"), and DOMINIC "DOE" (LAST NAME UNKNOWN)

("Dominic Doe") (collectively, the "Individual Defendants" and, together with the Corporate Defendants, the "Defendants"), and state as follows:

INTRODUCTION

1. This is an action brought by Plaintiffs on their own behalf and on behalf of similarly situated employees, alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. ("FLSA"), and the New York Labor Law ("NYLL"), arising from Defendants' various willful and unlawful employment policies, patterns and/or practices.

2. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of the FLSA, the NYLL, by engaging in a pattern and practice of failing to pay their employees, including Plaintiffs, compensation for minimum wages, overtime compensation for all hours worked over forty (40) each workweek, spread of hours pay for workdays lasting ten (10) hours or more, for failing to provide wage notices as required by the NYLL, and for illegally and fraudulently manipulating employee clock-in and clock-out times to reduce the number of Plaintiffs' hours recorded in business records.

3. Plaintiffs allege pursuant to the FLSA, that they are entitled to recover from the Defendants:

(1) unpaid minimum wages,

(2) unpaid overtime wages,

(3) liquidated damages,

(4) prejudgment and post-judgment interest, and

(5) attorneys' fees and costs.

4. Plaintiffs further allege pursuant to New York Labor Law § 650 et seq. and 12 New York Codes, Rules and Regulations §§ 146 ("NYCRR") that they are entitled to recover from the Defendants:

(1) unpaid minimum wages,

(2) unpaid overtime compensation,

(3) unpaid spread of hours premium for each day they worked ten (10) or more hours,

(4) compensation for failure to provide wage notices at the time of hiring in violation of the NYLL.

(5) liquidated damages equal to the sum of unpaid minimum wage and overtime pursuant to the NYLL.

(6) prejudgment and post-judgment interest, and

(7) attorneys' fees and costs.

JURISDICTION AND VENUE

5. This Court may properly maintain jurisdiction over Defendants because Defendants' contacts with this state and this judicial district, including but not limited to operating a principal place of business and employing workers in this District, are sufficient to exercise jurisdiction over Defendants while complying with traditional notions of fair play and substantial justice.

6. This Court has original federal question jurisdiction over this controversy under 29 U.S.C. §216(b), 28 U.S.C. § 1331, 1337, and 1343 because the claims asserted herein seek to redress violations of the Plaintiffs' federal civil and statutory rights.

7. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because these claims are so closely related to Plaintiffs' federal law wage and hour claims that they form parts of the same case or controversy under Article III of the United States Constitution; specifically, all claims asserted herein arise from Defendants' failure to pay required wages and Defendants' general unlawful employment policies.

8. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because Defendants conduct business in this District, and the following acts and omissions giving rise to the claims alleged herein took place in this District.

PLAINTIFFS

9. Mr. Herrera is a New York City resident who was employed by Defendants' Restaurant, Lafayette Grand Café and Bakery, located at 380 Lafayette Street, New York, NY 10003 for over three years, from on or around July 5, 2013 to on or around August 11, 2016.

10. Mr. Ordonez is a New York City resident who has been and is currently employed by Defendants' Restaurant, Lafayette Grand Café and Bakery, located at 380 Lafayette Street, New York, NY 10003 since on or around March 15, 2014.

DEFENDANTS

11. At all relevant times, Defendants knowingly and willfully: failed to pay Plaintiffs their lawfully earned minimum wages and overtime compensation in violation of the FLSA and the NYLL; and failed to provide spread of hours pay and a wage notice at the time of hiring.

12. Plaintiffs have fulfilled all conditions precedent to the institution of this action and/or conditions have been waived.

13. Upon information and belief, the Corporate Defendants either do or did business as joint employers concurrently or as successor employers or both.

14. Upon information and belief, Defendant NoHo Hospitality Group owns, in whole or in part, Defendants Lafayette Street Partners I and Lafayette Street Partners II.

15. Upon information and belief, at all times relevant to this action, the Corporate Defendants do or did business as Lafayette Grand Café & Bakery, a restaurant located at 380

Lafayette Street, New York, NY 10003 and engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors.

16. Upon information and belief, the Corporate Defendants are considered the same employer under the New York Anti-Shirt Changer Law, NYLL §219.4, because "employees or the subsequent employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors."

17. Upon information and belief, at all times relevant to this action, Corporate Defendants acted as joint employers concurrently while doing business as Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003 because they have concurrently engaged employees to work for Lafayette and share substantially the same management and control over the restaurant.

18. The Corporations that do business as Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003, are joint employers of Plaintiffs and constitute an enterprise as is defined by 29 U.S.C. §203(r) because these three corporate entities transfer staff and are otherwise engaged in related activities performed through unified operation and/or common control for a common business purpose, and are co-owned by the same owners.

CORPORATE DEFENDANTS

Lafayette Street Partners I

19. Upon information and belief, Defendant LAFAYETTE STREET PARTNERS, LLC owns and operates Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003, and has a New York Department of State ("NY DOS") process address at 380 Lafayette Street, Suite 205, New York, NY 10003.

20. Upon information and belief, Defendant Lafayette Street Partners I, LLC, owns and operates Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003. ‘

21. Upon information and belief, Lafayette Grand Café & Bakery had gross sales in excess of $500,000 per year. Upon information and belief, Lafayette Grand Café & Bakery purchased and handled goods moved in interstate commerce.

22. At all times relevant herein, the Lafayette Grand Café & Bakery was, and continues to be, an "enterprise engaged in commerce" within the meaning of FLSA.

23. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by LAFAYETTE STREET PARTNERS, LLC, which included handling food prepared with ingredients from other stats and washing dishes that moved in interstate commerce.

Lafayette Street Partners II, LLC

24. Upon information and belief, Defendant LAFAYETTE STREET PARTNERS II, LLC owns and operates Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003, and has a New York Department of State ("NY DOS") process address at 380 Lafayette Street, Suite 205, New York, NY 10003.

25. Upon information and belief, Defendant Lafayette Street Partners II, LLC, owns and operates Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003.

26. Upon information and belief, Lafayette Grand Café & Bakery had gross sales in excess of $500,000 per year. Upon information and belief, Lafayette Grand Café & Bakery purchased and handled goods moved in interstate commerce.

27. At all times relevant herein, the Lafayette Grand Café & Bakery was, and continues to be, an "enterprise engaged in commerce" within the meaning of FLSA.

28. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by LAFAYETTE STREET PARTNERS II, LLC, which included handling food prepared with ingredients from other stats and washing dishes that moved in interstate commerce.

NoHo Hospitality, LLC

29. Upon information and belief, Defendant NOHO HOSPITALITY, LLC is the parent company of LAFAYETTE STREET PARTNERS, LLC and LAFAYETTE STREET PARTNERS II, LLC.

30. Upon information and belief, Defendant NOHO HOSPITALITY, LLC owns and operates Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003, and has a New York Department of State ("NY DOS") process address at 380 Lafayette Street, Suite 205, New York, NY 10003.

31. Upon information and belief, Defendant NOHO HOSPITALITY, LLC, owns and operates Lafayette Grand Café & Bakery, a restaurant located at 380 Lafayette Street, New York, NY 10003.

32. Upon information and belief, Lafayette Grand Café & Bakery had gross sales in excess of $500,000 per year. Upon information and belief, Lafayette Grand Café & Bakery purchased and handled goods moved in interstate commerce.

33. At all times relevant herein, the Lafayette Grand Café & Bakery was, and continues to be, an "enterprise engaged in commerce" within the meaning of FLSA.

34. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by NOHO HOSPITALITY, LLC, which included handling food prepared with ingredients from other stats and washing dishes that moved in interstate commerce.

INDIVIDUAL DEFENDANTS

Eric Melo

35. Upon information and belief, Defendant Eric Melo is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with Lafayette Grand Café & Bakery.

36. Upon information and belief, Defendant Melo was a BOH (back of house) Manager for NoHo Hospitality Group from March 2009 to June 2015.

37. Upon information and belief, Defendant Melo owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

Gustavo Diaz

38. Upon information and belief, Defendant Gustavo Diaz is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with the Corporate Defendants.

39. Upon information and belief, Defendant Diaz owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

Luciano Duco

40. Upon information and belief, Defendant Luciano Duco is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with Lafayette Grand Café & Bakery.

41. Upon information and belief, Defendant Duco owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

Luke Ostrom

42. Upon information and belief, Defendant Luke Ostrom is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with the Corporate Defendants.

43. Upon information and belief, Defendant Ostrom owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

44. Upon information and belief, Defendant Ostom is a "proprietor" of the NoHo Hospitality Group as indicated on the Group's website.

Nicholas Lorentz

45. Upon information and belief, Defendant Lorentz is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with The Corporate Defendants.

46. Upon information and belief, Defendant Lorentz owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

47. Upon information and belief, Defendant Lorentz is the General Manageer of Lafayette Grand Café and Bakery.

Bryan Nasworthy

48. Upon information and belief, Defendant Nasworthy is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with The Corporate Defendants.

49. Upon information and belief, Defendant Nasworthy owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

50. Upon information and belief, Defendant Nasworthy is a Chef de Cuisine with NoHo Hospitality Group.

Dominic "Doe" Last Name Unknown

51. Upon information and belief, Defendant Dominic Doe is the owner, officer, director and/or managing agent of the Corporate Defendants, who participated in the day-to-day operations of the business, acted intentionally and maliciously, is an employer as defined in the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with The Corporate Defendants.

52. Upon information and belief, Defendant Nasworthy owns the stock of the Corporate Defendants and manages and makes all business decisions, including but not limited to the amount of the salary that employees receive and the number of hours that employees work.

STATEMENT OF FACTS

General Wage and Hour Allegations

53. Defendants committed the following alleged acts knowingly, intentionally and willfully.

54. Defendants knew that the nonpayment of minimum wages, overtime pay, spread of hours premium, and failure to provide wage notices would financially injure Plaintiffs and similarly situated employees and violate state and federal laws.

55. Upon information and belief, Defendants used a computer to record employee clock-in and clock-out times (the "Timekeeper Computer"), which displays an employee's name, work role, clock-in or clock-out time, and in the case of clock-outs, the number of regular rate and overtime rate hours worked in the shift.

56. Upon information and belief, Defendants Melo, Diaz, Duco, Ostrom, Lorentz, Nasworthy, and Dominic Doe had or have authorization to modify Plaintiffs' clock-in and clock-out times.

57. Upon information and belief, Defendant Nasworthy verbally admitted to Plaintiffs that other managers manipulated computer records to reflect fewer hours than Plaintiffs actually worked.

58. Upon information and belief, the Timekeeper Computer frequently malfunctioned, requiring a manager to manually input Plaintiffs' hours into the Corporate Defendants' electronic timekeeping system.

59. Upon information and belief, managers sometimes entered Plaintiffs' clock-in and clock-out times incorrectly, leading to errors in the number of hours processed during payroll.

60. Upon information and belief, Defendants Eric Melo and Gustavo Diaz, and possibly other Defendants, were pressured by senior management to use fewer employee hours.

61. Plaintiffs have personal knowledge that Defendants Eric Melo and Gustavo Diaz intentionally manipulated Plaintiffs' clock-in and clock-out times to reduce the number of employee hours that their departments used, thus willfully and deliberately reducing the number of both regular rate and overtime hours for which Plaintiffs' were paid, in violation of the FLSA and the NYLL.

62. Defendants, therefore, did not compensate Plaintiffs for overtime compensation according to state and federal laws.

63. When Plaintiffs and other similarly situated employees complained to Human Resources regarding incorrectly recorded hours, Human Resources issued new checks with updated hours on a case-by-case basis.

64. Upon information and belief, Defendants' Human Resources department failed to remedy Defendants' practice of shaving Plaintiffs' hours even after Plaintiffs warned that the problem was a routine practice.

65. At all relevant times, Defendants therefore had a policy and practice of reducing Plaintiffs' hours recorded in Defendants' computer system.

66. Defendants did not provide Plaintiffs and other Class members with written notices about the terms and conditions of their employment upon hire in relation to their rate of pay, regular pay cycle, and rate of overtime pay.

67. Although Defendants provided Plaintiffs with an employee handbook at the time of hiring, Defendants' actual practices and policies often differed from their published policies, particularly as to recording and storing clock-in and clock-out information as well as procedures for reporting and addressing payment problems.

68. Defendants knew that the nonpayment of minimum wages, overtime pay, and spread of hours premiums would economically injure Plaintiffs and the Class Members by their violation of federal and state laws.

Saul Herrera

69. Mr. Herrera worked at Lafayette Grand Café & Bakery, located at 42-16 43rd Avenue, Sunnyside, NY 11104 from about July 5, 2013 to August 11, 2016.

70. Mr. Herrera's job title was Dishwasher. His primary responsibility was to wash dishes, silverware, and other items used in the restaurant.

71. While employed by Defendants, Mr. Herrera, a dishwasher who used soap and cleaning items to clean restaurant supplies, was in a non-exempt role under federal and state laws, which require employers to pay overtime to employees in such roles.

72. Defendants did not provide Mr. Herrera with wage notices when they hired him or at any time thereafter.

73. Defendants routinely provided Mr. Herrera with paystubs that underreported the number of hours he worked.

74. From about July 5, 2013 to August 11, 2016, Mr. Herrera worked about 48 hours each week. Although he worked different days each week and different hours each day depending on the schedule assigned to him by Defendants, he consistently worked five days per week for 10 hours per day. He was off two days per week.

75. Mr. Herrera sometimes worked a sixth day per week to fill in for absent coworkers.

76. Mr. Herrera was initially compensated at a rate of $9 per hour, which was eventually raised to $11 per hour and $16.50 per hour for overtime. However, due to punch-in clock malfunctions, manager carelessness, and hours illegally deleted by managers, Mr. Herrera was not paid for all hours that he worked.

77. For example, Mr. Herrera's paystub for the week of October 26, 2015 to November 1, 2015 states that he worked only 43.08 hours when in fact he worked 48 hours or more.

78. Mr. Herrera rarely, if ever, received the spread of hours pay for shifts lasting more than 10 hours.

Hugo Ordonez

79. Mr. Ordonez is a current employee Lafayette Grand Café & Bakery, located at 42-16 43rd Avenue, Sunnyside, NY 11104 who began working for Defendants on or around March 15, 2014.

80. Mr. Ordonez's job title is Dishwasher. His primary responsibility is to wash dishes, silverware, and other items used in the restaurant.

81. While employed by Defendants, Mr. Ordonez, a dishwasher who used soap and cleaning items to clean restaurant supplies, was in a non-exempt role under federal and state laws, which require employers to pay overtime to employees in such roles.

82. Defendants did not provide Mr. Ordonez with wage notices when they hired him or at any time thereafter.

83. Defendants routinely provided Mr. Ordonez with paystubs that underreported the number of hours he worked.

84. From about March 15, 2014, Mr. Ordonez worked about 45 hours each week. Although he worked different days each week and different hours each day depending on the schedule assigned to him by Defendants, he consistently worked five days per week for 9 hours per day. He was off two days per week.

85. Mr. Ordonez sometimes worked a sixth day per week to fill in for absent coworkers.

86. During this period, Mr. Ordonez was compensated at rates of $11 per hour in regular wages and $16.50 per hour for overtime, but due to punch-in clock malfunctions, manager carelessness, and hours illegally deleted by managers, Mr. Ordonez was not paid for all hours that he worked.

87. Mr. Ordonez rarely or never received the spread of hours for shifts lasting more than 10 hours.

COLLECTIVE ACTION ALLEGATIONS

88. In violation of the FLSA and New York Labor Law and the supporting federal and New York State Department of Labor Regulations, Defendants knowingly and willfully operated their business with a policy of not paying Plaintiffs and other similarly situated employees either the FLSA minimum wage rate, the FLSA overtime rate (of time and one-half), the New York State minimum wage rate, or the New York State overtime rate (of time and one-half).

89. Defendants knowingly and willfully operated their business with a policy of not paying the New York State spread of hours premium to Plaintiffs and other similarly situated employees.

90. Defendants knowingly and willfully operated their business with a policy of not paying for the busboy uniform that Mr. Galicia and other similarly situated employees needed for work, thus violating the FLSA's requirement that employers purchase employees' tools of the trade. 29 C.F.R. § 531.35.

91. Through entry of judgment in this case (the "Collective Action Period"), Plaintiffs bring this action individually and on behalf of all other and former non-exempt employees who have been or were employed by the Defendants at their restaurant for up to the last three (3) years, who were not paid minimum wages, overtime compensation for all hours worked in excess of forty (40) hours per week (the "Collective Action Members"), who have been subject to the same common decision, policy, and plan to not provide required wage notices at the time of hiring, and who were required to pay for tools of the trade that must be the burden of the employer, in contravention of federal and state labor laws.

92. Upon information and belief, the Collective Action Members are so numerous the joinder of all members is impracticable. The identity and precise number of such persons are unknown, and the facts upon which the calculations of that number may be ascertained are presently within the sole control of the Defendants. Upon information and belief, there are more than 10 Collective Action Members who have worked for or have continued to work for the Defendants during the Collective Action Period, most of whom would not likely file individual suits because they fear retaliation, lack adequate financial resources, access to attorneys, or knowledge of their claims. Therefore, Plaintiffs submit that this case should be certified as a collective action under the FLSA, 29 U.S.C. §216(b).

93. Plaintiffs will fairly and adequately protect the interests of the Collective Action Members, and have retained counsel that is experienced and competent in the field of employment law and class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those members of this collective action.

94. This action should be certified as Collective Action because the prosecution of separate actions by individual members of the Collective Action would risk creating either inconsistent or varying adjudication with respect to individual members of this class that would, as a practical matter, be dispositive of the interests of Members who are not parties to the adjudication, or subsequently impair or impede their ability to protect their interests.

95. A Collective Action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation makes it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as collective action.

96. Questions of law and fact common to members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the questions of fact common to Plaintiffs and other Collective Action Members are:

a. whether the Defendants employed Collective Action members within the meaning of the FLSA;

b. whether the Defendants failed to pay the Collective Action Members statutory minimum wages required by the FLSA and the NYLL;

c. whether the Defendants filed to pay the Collective Action Members overtime wages for all hours worked above forty (40) each workweek in violation of the FLSA and the regulation promulgated thereunder;

d. whether the Defendants failed to pay the Collective Action Members spread of hours compensation for each day an employee worked over 10 hours;

e. whether the Defendants required the Collective Action Members to pay for tools of the trade that the FLSA actually requires employers to pay;

f. whether the Defendants failed to provide the Collective Action Members with a wage notice at the time of hiring as required by the NYLL;

g. whether the Defendants' violations of the FLSA are willful as that terms is used within the context of the FLSA;

h. whether the Defendants had a policy or practice of paying female employees less than similarly situated male employees; and,

i. whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive, and statutory damages, interest, costs and disbursements and attorneys' fees.

97. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

98. Plaintiffs and others similarly situated have been substantially damaged by Defendants' unlawful conduct.

CLASS ACTION ALLEGATIONS

99. Plaintiffs bring their NYLL claims pursuant to Federal Rules of Civil Procedure ("F. R. C. P.") Rule 23, on behalf of all non-exempt persons employed by Defendants at their restaurant doing business as The Corporate Defendants on or after the date that is six years before the filing of the Complaint in this case as defined herein (the "Class Period").

100. All said persons, including Plaintiffs, are referred to herein as the "Class." The Class members are readily ascertainable. The number and identity of the Class members are determinable from the records of Defendants. The hours assigned and worked, the positions held, and the rate of pay for each Class Member is also determinable from Defendants' records. For purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under said Rule 23.

101. The proposed Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parities and the Court. Although the precise number of such persons is unknown, and the facts on which the calculation of the number is presently within the sole control of the Defendants, upon information and belief, there are more than 10 members of the class.

102. Plaintiffs' claims are typical of those claims which could be alleged by any member of the Class, and the relief sought is typical of the relief that would be sought by each member of the Class in separate actions. All the Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay statutory minimum wages, overtime compensation, spread of hours pay, expenses related to tools of the trade, and wage notice violations. Defendants' corporation-wide policies and practices, including but not limited to their failure to provide a wage notice at the time of hiring, affected all Class members similarly, and Defendants benefited from the same type of unfair and/ or wrongful acts as to each Class member. Plaintiffs and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

103. Plaintiffs are able to fairly and adequately protect the interests of the Class and has no interests antagonistic to the Class. Plaintiffs are represented by attorneys who are experienced

and competent in representing Plaintiffs in both class action and wage and hour employment litigation cases.

104. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual Class members lack the financial resources to vigorously prosecute corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expenses that numerous individual actions engender. The losses, injuries, and damages suffered by each of the individual Class members are small in the sense pertinent to a class action analysis, thus the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Class members to redress the wrongs done to them. Further, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

105. Upon information and belief, Defendants and other employers throughout the state violate the New York Labor Law. Current employees are often afraid to assert their rights

out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing these risks.

106. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

a. whether Defendants employed Plaintiffs and the Class within the meaning of the NYLL;

b. whether Plaintiffs and Class members are entitled to minimum wages under the NYLL;

c. whether Plaintiffs and Class members are entitled to overtime under the NYLL;

d. whether Defendants maintained a policy, pattern and/or practice of failing to pay Plaintiffs and the Rule 23 Class spread of hours pay as required by the NYLL;

e. whether the Defendants provided wage notices at the time of hiring to Plaintiffs and class members as required by the NYLL;

f. whether the Defendants had a policy or practice of paying female employees less than similarly situated male employees;

g. whether Defendants wrongfully terminated employees in retaliation for filing complaints of harassment in the workplace; and

h. at what common rate, or rates subject to common method of calculation were and are the Defendants required to pay the Class members for their work

STATEMENT OF CLAIMS

COUNT I

[Violations of the Fair Labor Standards Act—Minimum Wage
Brought on behalf of the Plaintiffs, the FLSA Collective, and the Class]

107. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

108. At all relevant times, upon information and belief, Defendants have been, and continue to be, "employers" engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within the meaning of the FLSA, 29 U.S.C. §§206(a) and §§207(a). Further, Plaintiffs are covered within the meaning of FLSA, U.S.C. §§206(a) and 207(a).

109. At all relevant times, Defendants employed "employees" including Plaintiffs, within the meaning of FLSA.

110. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of $500,000.

111. The FLSA provides that any employer engaged in commerce shall pay employees the applicable minimum wage. 29 U.S.C. § 206(a).

112. At all relevant times, Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiffs, and the collective action members, for some or all of the hours they worked.

113. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §206 shall be liable to the employees affected in the amount of their unpaid minimum compensation, and in an additional equal amount as liquidated damages.

114. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by failing to compensate Plaintiffs and Collective Class Members at the

statutory minimum wage when they knew or should have known such was due and that failing to do so would financially injure Plaintiffs and Collective Action members.

COUNT II
[Violation of New York Labor Law—Minimum Wage
Brought on behalf of the Plaintiffs, the FLSA Collective, and the Class]

115. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

116. At all relevant times, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§2 and 651.

117. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay the minimum wage shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such under-payments found to be due the employee.

118. Defendants knowingly and willfully violated Plaintiffs' and Class Members' rights by failing to pay them minimum wages in the lawful amount for hours worked.

COUNT III
[Violations of the Fair Labor Standards Act—Overtime Wages,
Brought on behalf of the Plaintiffs, the FLSA Collective, and the Class]

119. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

120. The FLSA provides that no employer engaged in commerce shall employ a covered employee for a work week longer than forty (40) hours unless such employee receives compensation for employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he or she is employed, or one and one-half times the minimum wage, whichever is greater. 29 U.S.C. §207(a).

121. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §207 shall be liable to the employees affected in the amount of their unpaid overtime compensation, and in an additional equal amount as liquidated damages. 29 U.S.C. §216(b).

122. Defendants violated the FLSA by failing to compensate Plaintiffs, the FLSA Collective, and the Class for overtime hours.

123. At all relevant times, Defendants had, and continue to have, a policy and/or practice of refusing to pay overtime compensation at the statutory rate of time and a half to Plaintiffs and Collective Action Members for all hours worked in excess of forty (40) hours per workweek, which violated and continues to violate the FLSA, 29 U.S.C. §§201, et seq., including 29 U.S.C. §§207(a)(1) and 215(a).

124. The FLSA and supporting regulations required employers to notify employees about the employer's mandatory responsibilities under federal employment law. 29 C.F.R. §516.4.

125. Defendants willfully failed to notify Plaintiffs and FLSA Collective of the requirements of the employment laws in order to facilitate their exploitation of Plaintiffs' and FLSA Collectives' labor.

126. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by their failure to compensate Plaintiffs, the Collective Action Members, and the Class Members at the statutory overtime rate of time and one half for all hours worked in excess of forty (40) per week when they knew or should have known such was due and that failing to do so would financially injure Plaintiffs and Collective Action members.

COUNT IV

[Violation of New York Labor Law—Overtime Pay
Brought on behalf of the Plaintiffs, the FLSA Collective, and the Class]

127. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

128. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay proper overtime compensation shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such underpayments due to the employee.

129. Defendants' failure to pay overtime compensation to the Plaintiffs, the Collective Action Members, and the Rule 23 Class violated the NYLL.

130. Defendants' failure to pay Plaintiffs, the Collective Action Members, and the Rule 23 Class was not in good faith.

COUNT V

[Violation of New York Labor Law—Time of Hire Wage Notice Requirement Brought on behalf of the Plaintiffs, the FLSA Collective, and the Class]

131. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

132. The NYLL and supporting regulations require employers to provide written notice of the rate or rates of pay and the basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as a part of minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer. NYLL §195-1(a).

133. Defendants intentionally failed to provide notice to employees in violation of New York Labor Law § 195, which requires all employers to provide written notice in the employee's primary language about the terms and conditions of employment related to rate of pay, regular pay cycle and rate of overtime on his or her first day of employment.

134. Defendants not only failed to provide notice to each employee at Time of Hire, but also failed to provide notice to each Plaintiff even after the fact.

135. Due to Defendants' violations of New York Labor Law, each Plaintiff is entitled to recover from Defendants, jointly and severally, $50 for each workday that the violation occurred or continued to occur, up to $5,000, together with costs and attorneys' fees pursuant to New York Labor Law. N.Y. Lab. Law §198(1-b).

Prayer For Relief

WHEREFORE, Plaintiffs, on behalf of themselves, and the FLSA collective Plaintiffs and rule 23 class, respectfully request that this court enter a judgment providing the following relief:

a) Authorizing Plaintiffs at the earliest possible time to give notice of this collective action, or that the court issue such notice, to all persons who are presently, or have been employed by defendants as non-exempt tipped or non-tipped employees. Such notice shall inform them that the civil notice has been filed, of the nature of the action, of their right to join this lawsuit if they believe they were denied proper hourly compensation and premium overtime wages;

b) Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

c) Designation of Plaintiffs as representatives of the Rule 23 Class, and counsel of record as Class counsel;

d) Certification of this case as a collective action pursuant to FLSA;

e) Issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b), and appointing Plaintiffs and their counsel to represent the Collective Action Members;

f) A declaratory judgment that the practices complained of herein are unlawful under

FLSA and New York Labor Law;

g) An injunction against Corporate Defendant, its officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of unlawful practices and policies set forth herein;

h) An award of unpaid wages and overtime premium due Plaintiffs and the Collective Action members under the FLSA and New York Labor Law, plus compensatory and liquidated damages in the amount of twenty five percent under NYLL §§190 et seq., §§650 et seq., and one hundred percent after April 9, 2011 under NY Wage Theft Prevention Act, and interest;

i) An award of unpaid overtime wages due under FLSA and New York Labor Law;

j) An award of damages for Defendants' failure to provide wage notice at the time of hiring as required under the New York Labor Law.

k) An award of liquidated and/or punitive damages as a result of Defendants' knowing and willful failure to pay overtime compensation pursuant to 29 U.S.C. §216;

l) An award of liquidated and/ or punitive damages as a result of Defendants' willful failure to pay wages, overtime compensation, and spread of hours premium pursuant to New York Labor Law;

m) An award of costs and expenses of this action together with reasonable attorneys' and expert fees pursuant to 29 U.S.C. §216(b) and NYLL §§198 and 663;

n) The cost and disbursements of this action;

o) An award of prejudgment and post-judgment fees;

p) Providing that if any amounts remain unpaid upon the expiration of ninety days following the issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL §198(4); and

q) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Plaintiffs, on behalf of himself and the Collective Action Members and members of the Class, demands a trial by jury on all questions of fact raised by the complaint.

Dated: March 8, 2017
Flushing, NY

HANG & ASSOCIATES, PLLC.

/S JIAN HANG
Jian Hang, Esq.
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Flushing, New York 11354
Tel: 718.353.8588
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Attorneys for Plaintiffs

EXHIBIT 1

CONSENT TO SUE UNDER
FEDERAL FAIR LABOR STANDARDS ACT
CONSENTIMIENTO PARA DEMANDAR SEGÚN LA LEY DE NORMAS JUSTAS DE TRABAJO

Yo soy o era un(a) empleado/a de Lafayette Grand Café & Bakery, localizada en 380 Lafayette Street, New York, NY 10003, y / o de entidades relacionadas. Consiento ser demandante en una demanda para cobrar los salarios no remunerados. Estoy de acuerdo de que quedo obligado por los términos del Acuerdo de Retención Contingente firmado por el demandante nombrado en este caso.

HUGO ORDONEZ
Nombre y apellido legales (Letras de imprenta)

[signature]
Firma

12/28/2016
Date

EXHIBIT 2

CONSENT TO SUE UNDER
FEDERAL FAIR LABOR STANDARDS ACT
CONSENTIMIENTO PARA DEMANDAR SEGÚN LA LEY DE NORMAS JUSTAS DE TRABAJO

Yo soy o era un(a) empleado/a de Lafayette Grand Café & Bakery, localizada en 380 Lafayette Street, New York, NY 10003, y / o de entidades relacionadas. Consiento ser demandante en una demanda para cobrar los salarios no remunerados. Estoy de acuerdo de que quedo obligado por los términos del Acuerdo de Retención Contingente firmado por el demandante nombrado en este caso.

Saul Herrera
Nombre y apellido legales (Letras de imprenta)

[signature]
Firma

20 de diciembre de 2016
Date

EXHIBIT 3

NOTICE OF INTENTION TO ENFORCE SHAREHOLDER LIABILITY FOR SERVICES RENDERED

TO: GUSTAVO DIAZ, LUCIANO DUCO, LUKE OSTROM, NICHOLAS LORENTZ, BRYAN NASWORTHY, and DOMINIC "DOE" (LAST NAME UNKNOWN)

PLEASE TAKE NOTICE, that pursuant to the provisions of Section 630 of the Business Corporation Law of New York, you are hereby notified that SAUL HERRERA and HUGO ORDONEZ, and others similarly situated intend to charge you and hold you personally liable, jointly and severally, as one of the ten largest shareholders of LAFAYETTE STREET PARTNERS, LLC d/b/a LAFAYETTE GRAND CAFÉ & BAKERY, LAFAYETTE STREET PARTNERS II, LLC d/b/a LAFAYETTE GRAND CAFÉ & BAKERY, NOHO HOSPITALITY, LLC d/b/a NOHO and HOSPITALITY GROUP for all debts, wages, and/or salaries due and owing to them as laborers, servants and/or employees of the said corporations for services performed by them for the said corporations within the six (6) years preceding the date of this notice and have expressly authorized the undersigned, as their attorney, to make this demand on their behalf.

Dated: March 8, 2017